

IN RE:

**APPLICATION FOR
INTERVENTION AND
OBJECTIONS TO NOTICE
OF PENDING PROCEEDING
AND HEARING**

I. ANTHEM BCBS AND ITS MEMBERS WILL BE SUBSTANTIALLY AND DIRECTLY AFFECTED BY THIS PROCEEDING

1. Intervention. On timely application made pursuant to agency rules, the agency conducting the proceedings shall allow any person showing that he is [or] may be,

or is a member of a class which is or may be, substantially and directly affected by the proceeding, or any other agency of federal, state or local government, to intervene as a party to the proceeding.

5 M.R.S.A. § 9054.

Anthem BCBS clearly meets the statutory standards for intervention as a matter of right in this proceeding as a full party. As both the State of Maine's largest health insurance carrier as well as the current administrator of the DirigoChoice program, Anthem BCBS will be substantially and directly affected in several ways by the Board's decision determining the amount of aggregate measurable cost savings.

The aggregate measurable cost savings to be preliminarily determined by the Board in this proceeding, and thereafter reviewed by the Bureau of Insurance, establishes one cap on the amount of the savings offset payment ("SOP"). The SOP must be paid in the first instance by, among others, health insurance carriers. In turn, health insurance carriers may include the amount of the SOP in the calculation of the rates charged by the carrier to its members. *See, e.g.*, 24-A M.R.S.A. § 2736-C.

In addition to the substantial and direct effect of having to pay the SOP, Anthem BCBS member premium rates will be impacted by the amount of the SOP as the SOP is used in calculating Anthem BCBS member rates. Anthem BCBS insures more Maine residents than any other carrier and has a substantial interest in ensuring that the methodology used to calculate the aggregate measurable cost savings includes only those savings that are as a result of the operation of Dirigo Health and within the parameters of the Dirigo Health Act.

Anthem BCBS is also one of the State's largest employers and will bear the burden of paying the SOP in its own premium rates for its employee group and be forced, as are other Maine employers, to make the determination whether and to what extent employee health rates

must be increased to cover the cost of the SOP. If the SOP is no larger than the savings that are actually realized and flow through to the premium rates paid by Anthem BCBS employees, the system works as envisioned. Anthem BCBS has a substantial interest, however, in ensuring that the SOP does not exceed the actual savings that have flowed from providers, to Anthem BCBS, and ultimately to members and employees in the form of lower premium rates.

Anthem BCBS's interests in this proceeding are also unique because Anthem BCBS administers the DirigoChoice program and provides coverage for DirigoChoice members. The SOP is intended to fund subsidies for DirigoChoice members and, as the administrator of the program, Anthem BCBS is in a unique position to understand the level of SOP funding necessary to provide the subsidies that will help the program grow.

Finally, for the reasons outlined above, the Superintendent of Insurance granted Anthem BCBS individual intervenor status in the 2005 savings offset proceeding, recognizing Anthem BCBS's direct and substantial interest in the outcome of the determinations that lead to the calculation of the SOP. The Board should do the same in this proceeding.

For the reasons set forth above, Anthem BCBS will be substantially and directly affected by this proceeding and, accordingly, requests that the Board grant its application to intervene as a full party to this proceeding as a matter of right.

II. OBJECTIONS TO PROCEDURAL ORDER

Anthem BCBS objects to several aspects of the Board's Notice of Pending Proceeding and Hearing and proposed Procedural Order No. 1 ("Notice and Order"). First, the Notice and Order purport to require that an intervenor has the burden of presenting, among other things, (1) a methodology to be considered by the Board, (2) the presentation of the components to be

included in aggregate measurable cost savings, and (3) the presentation of data to support the amount of aggregate measurable cost savings derived from that methodology.

Conditioning intervenor status on affirmatively undertaking these duties is inconsistent with the standards for intervention under the Maine Administrative Procedures Act as set forth in Part I above, *see* 5 M.R.S.A. § 9054(1), and also contrary to the Dirigo Health Act, which places these responsibilities on the Dirigo Health Agency and its Board and not on other parties. *See* 24-A M.R.S.A. § 6913(1), (2). Anthem BCBS clearly satisfies the legal parameters for intervention as a matter of right in this proceeding. Anthem BCBS cannot be required, as a condition of intervention status, to: (1) develop its own methodology, particularly in advance of the Board having produced its preliminary approach; (2) make its own determination of aggregate measurable cost savings; or (3) present data to support any particular amount of savings. These are the Board's responsibilities. Intervenors should be permitted to provide alternative methodologies, but requiring it as a condition to achieving intervenor status is improper and contrary to the law. Accordingly, Anthem BCBS objects to the Notice and Order to the extent it purports to place upon it these additional burdens as conditions for intervenor status.

The structure of the adjudicatory proceeding as set forth in draft Procedural Order No. 1 is inappropriate and will not lead to a full and fair adjudication of the issues. As set forth above, the DHA Board has the statutory responsibility to develop a methodology for calculating the aggregate measurable cost savings as a result of the operation of Dirigo Health. Logically, the Board should present its methodology first and the intervenors should be given a reasonable discovery period to consider and explore the Board's recommended methodology and calculation. If thereafter an intervenor supports an alternative methodology, that intervenor

should identify that alternative at a time reasonably before the hearing to permit the Board and its counsel an opportunity to prepare for the hearing.

Rather than the logical consecutive identification of methodologies described above, the proposed Procedural Order contemplates simultaneous identification of methodologies, before the parties are made aware of the Board's preferred methodology and calculation and, hence, before the parties know whether and to what extent they may disagree with the approach. This is not workable. Indeed, the proposed Procedural Order No. 1 is unreasonable and does not provide a process that allows the parties an adequate opportunity to be heard or meaningful opportunity to participate in the determination of the aggregate measurable cost savings.

In addition, the identification of methodology and supporting data is due at 3:00 pm on March 8th, while pre-filed testimony concerning that methodology and data is due less than two days later on March 10th. The complexity of determining aggregate measurable cost savings coupled with the importance of this proceeding to Anthem BCBS and the State of Maine, dictates that more than two days should be allotted for studying the methodology and supporting data provided by the Board. To allow only two days to examine the Board's methodology does not provide intervenors with enough time to properly study it and react to it. Such a short timeframe is not fair and is likely to lead to an inadequate record in this proceeding.

Anthem BCBS suggests a period of no less than two weeks between the Board's identification of methodology and supporting data and the deadline for witness designations. Filing of pre-filed testimony and exhibits should occur no sooner than two days after the deadline for witness designations. All of this should be feasible because the Board has left itself some two weeks to make a decision by April 1st, while leaving the parties with less than two *days* to examine and react to the Board's methodology and develop their case.

Anthem BCBS respectfully requests that the proposed procedural order be modified to allow parties a full and fair opportunity to examine and respond to the Board's proposed aggregate measurable cost savings and associated methodology. The schedule should be reworked so that (1) the Board presents the details of its preliminary methodology and calculation, (2) the parties are permitted a brief discovery period to explore that preliminary methodology, (3) the intervenors identify alternative methodologies, if any, and (4) the parties thereafter submit prefiled testimonies. As reflected in the schedule proposed by the Chamber in its February 9, 2006 filing, such a reworking of the schedule will produce a more informed record for decision and should not prevent the Board from issuing its decision by April 1st. Anthem BCBS requests that the Board schedule an immediate telephonic conference of counsel to address these issues and develop a workable schedule for this proceeding.

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Certificate of Service

I, Christopher T. Roach, Esq. certify that the foregoing Application to Intervene and Objections to Notice of Pending Proceeding and Hearing were served this day upon the following parties via U.S. and Electronic Mail.

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